

A Bank Negara Malaysia v Gerald Glesphy & Ors

SUPREME COURT (KUALA LUMPUR) — CIVIL APPEAL NO 02-174-1991
HARUN HASHIM AND MOHAMED YUSOFF SCJJ AND CHARLES HO J
8 NOVEMBER 1991

B *Civil Procedure — Jurisdiction — High Court — Breach of scholarship agreement — Whether sessions court has exclusive jurisdiction — Contracts (Amendment) Act 1976 s 7 — Courts of Judicature Act 1964 s 23(1)*

C *Civil Procedure — Costs — Claim inappropriately filed in High Court — Successful appellant entitled to costs at sessions court rates only*

D In this case the appellant alleged that the first respondent had breached the conditions of a scholarship agreement and took out a writ in the High Court claiming damages, interest and cost. The respondents applied for the writ of the appellant to be struck out on the ground that the High Court has no jurisdiction to hear the case. The application was allowed by the learned judge and the appellant appealed.

Held, allowing the appeal:

- E** (1) The High Court has unlimited jurisdiction to try all civil claims, including claims that may be made in the sessions court and the magistrate's court. Section 7 of the Contracts (Amendment) Act 1976, read together with s 23 of the Courts of Judicature Act 1964, does not oust the jurisdiction of the High Court to try scholarship agreement cases.
- F** (2) The order of the learned judge should be set aside but as the appellant should have filed its claim in the sessions court, it would be entitled to costs in the High Court at the rates prescribed for the sessions courts only.

[Bahasa Malaysia summary]

G Di dalam kes ini perayu telah mendakwa bahawa responden pertama telah memungkirkan syarat-syarat perjanjian biasiswa dan telah mengeluarkan writ di Mahkamah Tinggi menuntut ganti rugi, faedah dan kos. Responden-responden memohon supaya writ perayu itu dibatalkan atas alasan Mahkamah Tinggi tidak mempunyai bidang kuasa mendengar kes itu. Permohonan itu dibenarkan oleh yang arif hakim dan perayu telah membuat rayuan.

H **Diputuskan**, membenarkan rayuan itu:

- I** (1) Mahkamah Tinggi mempunyai bidang kuasa yang tidak terbatas untuk mendengar semua tuntutan sivil, termasuk tuntutan yang boleh dibuat di mahkamah sesyen dan mahkamah majistret. Seksyen 7 Akta Kontrak (Pindaan) 1976, dibaca bersama dengan s 23 Akta Mahkamah Kehakiman 1964, tidak menyingkirkan bidang kuasa Mahkamah Tinggi mendengar kes-kes perjanjian biasiswa.

- (2) Perintah hakim yang arif hendaklah diketepikan, akan tetapi oleh kerana perayu seharusnya membawa tuntutannya di mahkamah sesyen, perayu hanya berhak mendapat kos di Mahkamah Tinggi atas kadar yang diperuntukkan bagi mahkamah sesyen.]

Notes

For case on costs at lower court scale, see 2 *Mallal's Digest* (4th Ed) para 623.

For cases on jurisdiction of High Court, see 2 *Mallal's Digest* (4th Ed) paras 1436–1438.

Cases referred to

- 1 *Ponniah v Chinniah* [1961] MLJ 66 (refd)
- 2 *Albon v Pyke* 1842 4 M & G 421; 134 ER 172 (folld)
- 3 *Macphail & Co v Harper Gilfillan & Co Ltd* [1937] MLJ 97 (refd)
- 4 *Song Kim Puah v Lim Hoe Chye* [1954] MLJ 197 (refd)

Legislation referred to

Contracts (Amendment) Act 1976 s 7

Courts of Judicature Act 1964 s 23(1)

Subordinate Courts Act 1948 s 65

Rules of the High Court 1980 O 59 r 27(6)

Appeal from: Suit No P23-222-1986 (High Court, Kuala Lumpur)

CV Das (Linda Tai with him) (Shook Lin & Bok) for the appellant.

Lee Min Choon (Yapp Hock Swee with him) (Lee Perara & Tan) for the respondents.

Cur Adv Vult

Harun Hashim SCJ (delivering the judgment of the court): The only issue in this appeal is whether the sessions court has exclusive jurisdiction to hear scholarship agreement cases. The brief facts giving rise to this appeal are as follows.

The first respondent was awarded a scholarship in 1975 by Bank Negara to read law at a university and subsequently to read-in-chambers at a firm of solicitors. In consideration of the scholarship grants, the first respondent was required to serve Bank Negara for a total period of 12 years failing which he was to pay Bank Negara \$90,000. He left the service of Bank Negara after 4½ years. Bank Negara demanded payment of the \$90,000 but the first respondent failed to do so, whereupon Bank Negara took out a writ in the High Court on 18 November 1986 claiming the sum of \$90,000 as liquidated damages, interests and costs. The other four respondents are sureties of the first respondent.

On 19 October 1990, the respondents took out a summons-in-chambers that Bank Negara's (the appellant) writ be struck out on the ground that the High Court has no jurisdiction to hear the case. It was argued that s 7 of the Contracts (Amendment) Act 1976 ('the Act') conferred exclusive jurisdic-

- A tion on the sessions court with respect to scholarship agreements and at the same time ousted the jurisdiction of the High Court. The learned judge agreed and struck out the writ with liberty to file a fresh claim.

The preamble to the Act reads:

- B An Act to amend the Contracts Act, 1950 to make provisions with respect to scholarship agreements.

Section 7 of the Act provides:

- C Notwithstanding anything contained in any written law to the contrary, the Sessions Court and, in the case of Sabah and Sarawak, the Court of a Magistrate of the First Class shall have jurisdiction in all civil proceedings which arise from or relate to a scholarship agreement.

- D The Act came into force on 27 February 1976. On that date the civil jurisdiction of the sessions court did not exceed \$25,000 and was only increased to \$100,000 with effect from 22 May 1987: s 65 Subordinate Courts Act 1948. It was for this reason, it is said, that the appellant filed the claim in the High Court. It is clear, however, from s 7 of the Act, that the sessions court had jurisdiction to hear scholarship agreement cases not only of amounts exceeding \$25,000 but also of amounts exceeding \$100,000 as well, as far back as 1976.

- E But is the jurisdiction exclusive to the sessions court? The plain wording of s 7 does not say so. It merely says 'the Sessions Court ... shall have jurisdiction ...'. It would be different if the word 'only' is added before the words 'the Sessions Court' or by some other expressions like 'to the exclusion of any other Court'. The words, 'Notwithstanding anything contained in any written law to the contrary', in this context, can only refer to s 65 of the Subordinate Courts Act 1948 which limit the civil jurisdiction of the sessions court to claims not exceeding \$25,000 before 1976 and \$100,000 thereafter. Section 7 is therefore only permissive and not imperative in enhancing the jurisdiction of the sessions court.

Section 23(1) of the Courts of Judicature Act 1964 provides, inter alia:

- G Subject to the limitations contained in Article 128 of the Constitution the High Court shall have jurisdiction to try all civil proceedings where —

The word 'all' means any civil proceeding irrespective of the amount of the claim. To put it in another way, the High Court has *unlimited jurisdiction* to try all civil claims, including claims that may be made in the sessions court and the magistrate's court: *Ponniah v Chinniah*.¹

- H Tindal CJ said in *Albon v Pyke*:²

The general rule undoubtedly is that the jurisdiction of superior courts is not taken away except by express words or necessary implication.

10 *Halsbury's Laws of England* (4th Ed) para 713 at p 321:

- I The chief distinctions between superior and inferior courts are found in connection with jurisdiction. Prima facie, no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognisance of the particular court.

It follows that s 7 of the Act read together with s 23 of the Courts of Judicature Act 1964 does not oust the jurisdiction of the High Court to try scholarship agreement cases.

In the instant case, we are inclined to think that the truth of the matter is that the appellant had overlooked the provisions of s 7 of the Contracts (Amendment) Act 1976 when they filed the writ in the High Court.

For the reasons we have stated, the writ is good and effective. We accordingly allowed the appeal with costs here and below. We set aside the order of the learned judge and ordered the deposit to be refunded to the appellant. However, as the appellant should have filed the claim in the sessions court, the appellant would be entitled to costs in the High Court at the rates prescribed for the Sessions Court only: O 59 r 27(6) Rules of the High Court 1980. See also *Macphail & Co v Harper Gilfillan & Co Ltd*³ and *Song Kim Puah v Lim Hoe Chye*.⁴

Appeal allowed.

Reported by Prof Ahmad Ibrahim

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